

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:05CV252

JACOB KANSAS,

Plaintiff,

vs.

PISGAH VIEW RANCH, INC.,

Defendant.

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ORDER

THIS MATTER is before the Court on Plaintiff's motion to vacate this Court's Order of Dismissal entered June 30, 2006.

Attached to the Plaintiff's motion is a copy of a letter from the process server purporting to have served the Defendant herein through its registered agent, Steven Douglas Cogburn, on June 6, 2006, six days after the June 1, 2006, deadline. Plaintiff offers no explanation for his failure to contact the process server before the June 1, 2006, deadline to make inquiry as to why the summons and complaint had not been served. Because it appears from the record that the Plaintiff has had 12 months in which to make service of the summons and complaint on the Defendant

herein and has failed to do so,¹ the Court finds that his motion to vacate the Court's dismissal is not well taken and is denied.

IT IS, THEREFORE, ORDERED that the Defendant's motion to vacate is hereby **DENIED**.

Signed: July 31, 2006



Lacy H. Thornburg
United States District Judge



¹ The Court notes that the Plaintiff's initial complaint was filed on July 5, 2005, and summons was not issued until December 19, 2005, at the time the amended complaint was filed. While the Court understands that the Plaintiff lives in New Orleans and was directly affected by Hurricane Katrina and its aftermath, the dilatory manner in which the case has been prosecuted cannot be blamed solely on that disaster. While the Court would grant the same consideration to a *pro se* litigant not familiar with the Federal Rules of Civil Procedure as was afforded to the Plaintiff here, the Court cannot excuse the conduct of this *pro se* Plaintiff, a licensed attorney.